

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.02.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.1566 of 2002

- 1.The State of Tamil Nadu
rep. By the Secretary
Department of Weights and Measures
Chennai 9.
- 2.The Controller of Legal Metrology
Chennai 6.
- 3.The Assistant Controller of
Legal Metrology, Chennai 6. ... Appellants/Respondents

vs.

Hindustan Petroleum Corporation Ltd.,
No.98/99 Elaya Mudali Street
Chennai rep. By its Chief
Terminal Manager Mr.P.K. Roy. ... Respondents/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order of His Lordship Mr. Justice K. Govindarajan made in W.P.No.7582 of 1998 dated 11.11.1999. Presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd Respondent relating to the notice dated 3.4.1998 under reference RL.No. 140/98 and to quash the same and further direct the respondents from in any manner proceedings against the petitioner company under the Provisions of the Standards of weights and measures (Enforcement) Act 1985 and the rules framed under the proviso.

For appellants : Mr. V. Viswanathan
Addl. Government Pleader

For respondent : Mr. P. Ranganatha Reddy
for M/s. King and Partridge

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JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 11.11.1999 made in W.P.No.7582 of 1998, allowing the writ petition filed by the Hindustan Petroleum Corporation Ltd., Chennai, the respondent in the writ petition, viz., Department of Weights and Measures, Chennai-9, the Controller of Legal Metrology, Chennai-6 and the Assistant Controller of Legal Metrology, Chennai-6, have filed the above writ appeal.

2. The respondent herein is the writ petitioner - Hindustan Petroleum Corporation Ltd., (in short, "the Company"), which is a Company within the meaning of Section 617 of the Companies Act, 1956. The Company has its refineries at Mumbai and Visakhapatnam with a wide network of depots, terminals, LPG bottling plants, etc. One of such terminal is located at Tondiarpet, Chennai 21, for storage of Motor Spirit, High Speed Diesel and other allied products. The depots including the one at Tondiarpet, Chennai 21, have storage facilities consisting of large capacity tankers for storing petroleum and its allied products, transported through pipelines and/or by wagons, or by tanker lorries for distribution throughout the State of Tamil Nadu and neighbouring States. The tanker lorries transporting petroleum and its allied products from Terminals/Depots to the retail outlets, etc. are owned by the Company or taken on contract by the Company from private transporting contractors. All the trucks are built and fabricated as per specifications of the Petroleum Act, 1934. The tanks of the said tanker lorries vis-a-vis their "dip rods" (for measuring quantity of the product) are calibrated and verified periodically by the Weights and Measures Authorities, as per the Standards of Weights and Measures Law. The "dip rod" is used as a standard measure by the Company as well as the retailers. The petitioner Company transports petroleum and its allied products from the storage tanks at terminals/depots to the retail outlets for subsequent distribution at the retail outlets directly to consumers. The procedure followed by the Company, the equipment and the infrastructure used by the Company for the purpose of storage and filling the said product into the tank trucks, etc. are totally internal matters of the Company. The equipment that is being used by the Company does not require any verification or reverification under the Standards of Weights and Measures Laws. Since the officials of the Department of Weights and Measures without adhering to the statutory provisions interfered with its affairs, the Company approached this Court by filing the writ petition seeking to issue a writ of certiorari mandamus calling for the records of the third respondent, the Assistant Controller of Legal Metrology, Chennai-6, relating to the notice dated 03.04.1998 and quash the same and further direct the respondents from in any manner

proceeding against the petitioner Company under the provisions of the Standards of Weights and Measures (Enforcement) Act, 1985 and the Rules framed thereunder.

3. Before the learned single Judge, the Joint Secretary to Government, Labour and Employment Department, Chennai 9, filed a counter affidavit stating that even the measuring instrument 'flow meters' are well within the definition of Section 2(zc) and 2(zd) of the Standards of Weights and Measures Act, 1976 (Tamil Nadu Act 60 of 1976) (in short, 'the Act'), as they are being used exclusively or additionally for verifying measurement. The 'flow meters' are being used as measuring instruments, they have to be verified and stamped. The "dip rod" which is also a measuring instrument is quite different from that of 'flow meters', as the "dip rods" are used to know the particulars of capacity of the compartments in the tanker lorries, whereas, 'flow meters' are used to assess the flow of petroleum products during the course of filling up the tanker lorries.

4. The learned single Judge, after finding that the 'flow meters' are not being used in any transaction as no transaction took place in the terminals, allowed the writ petition.

5. Mr. V. Viswanathan, learned Additional Government Pleader raised only one contention that even though 'flow meters' are being used in the terminals, inasmuch as the same are being used for measurement, they come under Section 24 of the Standards of Weights and Measures (Enforcement) Act, 1985. On going through the relevant statutory provisions, the assertion of the Company as well as the stand of the Department of Weights and Measures and the reasoning of the learned Judge in allowing the writ petition, we are unable to accept the above contention for the following reasons.

6. It is not in dispute that the terminal of the Company located at Tondiarpet, Chennai-21 is for storage of Motor Spirit, High Speed Diesel and other allied products. Motor Spirit and other products are being transported to storage point through pipe lines and by tanker wagons or by tanker lorries. It is the specific claim of the Company that at the storage point, no "transaction" in terms of Section 2(z) of the Act takes place. As per Section 2(z), "Transaction" means,

- (i) Any contract, whether for sale, purchase, exchange or any other purpose, or;
- (ii) Any assessment or royalty, toll, duty or other dues, or
- (iii) the assessment of any work done, wages due or services rendered. "

"Section 2 (z-c) defines "weighing or measuring instrument" as,

"Weighing or measuring instrument" means any

object, instrument apparatus or device, or any combination thereof, which is, or is intended to be, used, exclusively or additionally, for the purpose of making any weighment or measurement, and includes any appliance, accessory or part associated with any such object, instrument, apparatus or device. "

Section 2(z-d) defines "Weight or Measure" as,

"Weight or "Measure" means a weight or measure specified by or under this Act, and includes a weighing or measuring instrument. "

7. It is also useful to refer Section 24 (1) and (2) of the Standards of Weights and Measures (Enforcement) Act, 1985.

" Section 24 Verification and stamping of weights or measures.- (1): Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measures is being, or is intended or likely to be used by him in any transaction or for industrial production or for protection shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place or specified time), on payment of such fees as may be prescribed.

(2) Every weight or measure referred to in sub-section (1) shall be re-verified at such periodical intervals as may be prescribed.

Explanation: For the removal of doubts it is hereby declared that no periodical re-verification shall be necessary in relation to any weight or measure which is used exclusively for domestic purposes.

Rule 14(1) of the Tamil Nadu Standards Weights and Measures (Enforcement) Rules, 1989 reads thus:

Every weight or measure used or intended to be used in any transaction or for industrial production or for protection shall be verified or re-verified and stamped atleast once in a year.

Provided that storage tanks including vats shall be re-verified or re-calibrated and

stamped atleast once in a period of five years. "

8. The above mentioned provisions make it clear that three important ingredients for the application of the Act are to be satisfied:

- (i) the person must be in custody of a weight or measure;
- (ii) such an equipment should actually be used as a weighing or measuring instrument;
- (iii) such weight or measure should be used in any transaction or for industrial production or for protection.

9. It is relevant to point out that Section 24(1) postulates as exception to domestic use. As rightly argued by the learned counsel for the Company and concluded by the learned Judge, a careful reading of the provisions of the Act and Rules makes it abundantly clear that what is intended is to prevent commercial transactions that take place involving weights and/or measures without being properly marked, stamped and verified. We are satisfied that Section 24 of the Standards of Weights and Measures (Enforcement) Act, 1985 to which a reference has been made by the Assistant Controller of Legal Metrology, Chennai 6, would clearly apply only to commercial transactions and it has nothing to do with the internal checking of a product by weight or measure. As rightly pointed out by the Company, for the purpose of commercial transaction of supply of petroleum, the instrument used is the dip rod which is calibrated, marked, stamped and verified by the authorities empowered to enforce the Act and Rules. Absolutely there is no material to arrive at a conclusion that the 'flow meters' are used for commercial transactions. In the counter affidavit, the Company has specifically asserted that the 'flow meters' are solely used for internal purposes and the meters basically serve as a check within the system. According to them, they are used to,

- (1) avoid spillage of products at the time of filling of tanker lorries and to avoid possible fire hazards;
- (2) provide faster rate of filling of tanker lorries and to provide auto control of flow at the time of nearing completion of filling and
- (3) assist in inducing better loss control measures on day to day basis.

10. It is clear from the provisions as well as the materials placed that the delivery of the products to the dealer/agent is never made on the basis of 'flow meters' and the tanker lorries, after filling, are checked only with the 'dip rods'. As stated

earlier, the 'dip rods' are calibrated, verified, reverified and checked by the Weights and Measures Department periodically as required under the law. In these circumstances, we are satisfied that Section 24 of the Act has no application to the flow meters used by the Company for internal purpose of checking and the Department of Legal Metrology wholly lacks power, authority and jurisdiction to insist the petitioner to have the 'flow meters' stamped and verified. We are also satisfied that the 'flow meters' being used by the Company in depot/terminals do not affect the interest of the consumers and thus, the very purpose for which the Act is promulgated is not defeated. We are satisfied that the impugned notice dated 03.04.1998, issued by the Assistant Controller of Legal Metrology/third respondent in the writ petition is illegal, arbitrary and opposed to the provisions of the Act. This aspect has been correctly appreciated and the impugned notice has been quashed by the learned Judge. We are in entire agreement with the said conclusion. Similar view has been expressed by the Division Bench of Bombay High Court in WP.No.518 of 1989 dated 29.11.1996 (Bharat Petroleum Corporation Ltd., vs. State of Maharashtra) and WP.No.5921 of 2000 dated 24.01.2007 (Hindustan Petroleum Corporation Ltd. vs. Maharashtra Industrial rep. by the Secretary, Department of Weights and Measures, Mumbai).

In these circumstances, we do not find any error or infirmity in the order of the learned single Judge. Consequently, the writ appeal fails and the same is dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Department of Weights and Measures
Chennai 9.
- 2.The Controller of Legal Metrology
Chennai 6.
- 3.The Assistant Controller of
Legal Metrology, Chennai 6.
4. The Chief Terminal Manager,
Hindustan Petroleum Corporation Ltd,
98/99, Elaya Mudali Street,
Chennai

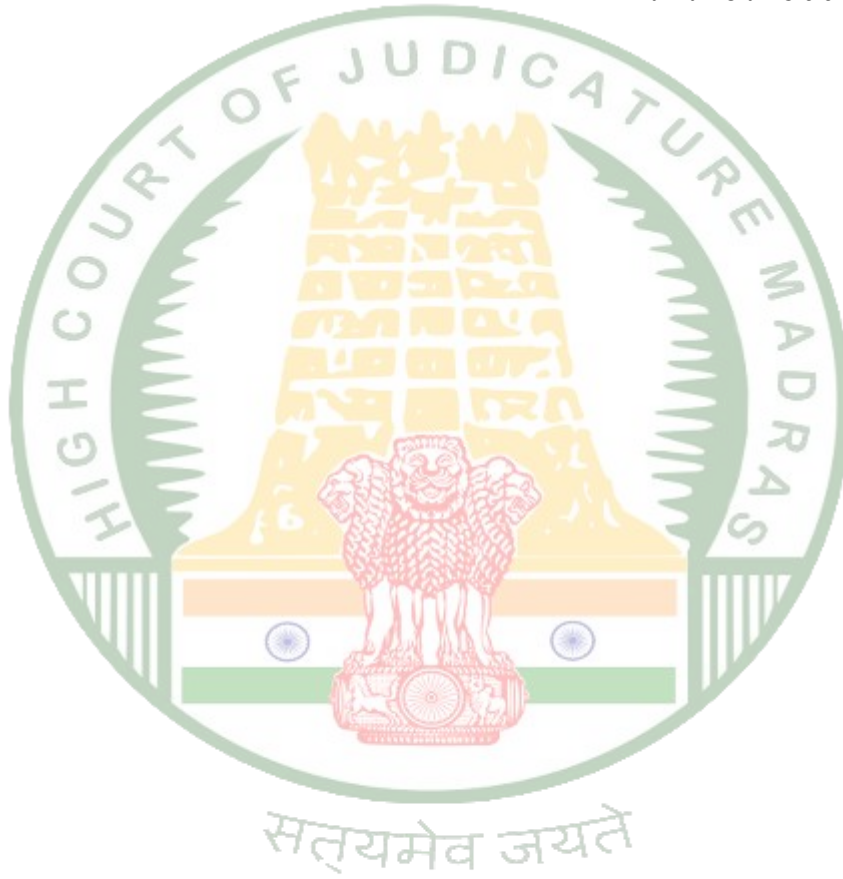
+ 1 cc to the Government Pleader, SR No.6918

+ 1 cc to M/s. King & Partridge SR No. 7246

TEJ(CO)
SR/14.2.2007

Judgment in

W.A.No.1566 of 2002



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